

AMENDED IN SENATE AUGUST 3, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1802

Introduced by Assembly Member Chávez

February 8, 2016

An act to amend Sections 13901 and 13902 of the Government Code, *and to amend Sections 1485.5, 4902, 4903, and 4904 of the Penal Code*, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1802, as amended, Chávez. California Victim Compensation ~~and Government Claims Board: membership~~. *reorganization*.

Existing law establishes, within the Government Operations Agency, the California Victim Compensation ~~and Government Claims Board~~, composed of the Secretary of Government Operations, or his or her designee, the Controller, and a 3rd member who is appointed by, and serves at the pleasure of, the Governor. Existing law requires specific compensation for the member who is appointed by the Governor, unless that member is a state officer. Administrative costs of the board are paid from the Restitution Fund, a continuously appropriated fund, except for specific costs that include, among others, the administrative costs of the board, which are subject to annual review through the state budget process.

This bill would add 2 members to the board who would be appointed by, and serve at the pleasure of, the Governor. One new member would be an expert, as defined, in the rights of crime victims and the other new member would be a physician, psychiatrist, or psychologist with

expertise in treating or providing services to crime victims. The bill would provide specific compensation for any member who is not a state officer, would specify that the Controller may designate an individual to serve on the board as his or her designee, and would make nonsubstantive changes to these provisions.

Existing law provides that a person who has been convicted of a felony and imprisoned in the state prison or county jail, but who is innocent or granted a pardon by the Governor for specified reasons, may present a claim against the state to the California Victim Compensation Board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment, as specified. Existing law requires the board to hold a hearing for these claims and to be bound by specified factual findings and credibility determinations. Existing law requires the board to make certain determinations and recommendations to the Legislature regarding payment of compensation based on the facts and its conclusions from the case.

This bill would create a Special Master who is appointed by and serves at the pleasure of the Governor and would require the Special Master, instead of the board, to hold a hearing for specified claims and to be bound by specified factual findings and credibility determinations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13901 of the Government Code is~~
2 ~~amended to read:~~
3 ~~13901. (a) There is, within the Government Operations~~
4 ~~Agency, the California Victim Compensation and Government~~
5 ~~Claims Board.~~
6 ~~(b) The board shall be composed of all the following members:~~
7 ~~(1) The Secretary of Government Operations, or his or her~~
8 ~~designee.~~
9 ~~(2) The Controller, or his or her designee.~~
10 ~~(3) One member who shall be appointed by, and serve at the~~
11 ~~pleasure of, the Governor. This member may be a state officer.~~
12 ~~(4) One member who shall be appointed by, and serve at the~~
13 ~~pleasure of, the Governor and an expert in the rights of crime~~
14 ~~victims. As used in this in paragraph, "expert" means someone~~
15 ~~who is qualified by education, training, and work experience;~~

1 ~~possesses a baccalaureate or advanced degree or is credentialed~~
2 ~~by the National Advocate Credentialing Program; and has a~~
3 ~~minimum of two years of experience in social work or victim~~
4 ~~advocacy.~~

5 ~~(5) One member who shall be appointed by, and serve at the~~
6 ~~pleasure of, the Governor and a physician, psychiatrist, or~~
7 ~~psychologist with expertise in treating or providing services to~~
8 ~~crime victims.~~

9 ~~(e) Any reference in statute or regulation to the State Board of~~
10 ~~Control shall be construed to refer to the California Victim~~
11 ~~Compensation and Government Claims Board.~~

12 *SECTION 1. Section 13901 of the Government Code, as*
13 *amended by Section 104 of Chapter 31 of the Statutes of 2016, is*
14 *amended to read:*

15 13901. (a) There is within the Government Operations Agency
16 the California Victim Compensation Board.

17 ~~(b) The board consists of the Secretary of Government~~
18 ~~Operations or his or her designee and the Controller, both acting~~
19 ~~ex officio, and a third member who shall be appointed by and serve~~
20 ~~at the pleasure of the Governor. The third member may be a state~~
21 ~~officer who shall act ex officio.~~

22 *(b) The board shall be composed of all the following members:*

23 *(1) The Secretary of Government Operations, or his or her*
24 *designee.*

25 *(2) The Controller, or his or her designee.*

26 *(3) One member who shall be appointed by, and serve at the*
27 *pleasure of, the Governor. This member may be a state officer.*

28 *(4) One member who shall be appointed by, and serve at the*
29 *pleasure of, the Governor and who is an expert in the rights of*
30 *crime victims. As used in this in paragraph, "expert" means*
31 *someone who is qualified by education, training, and work*
32 *experience; possesses a baccalaureate or advanced degree or is*
33 *credentialed by the National Advocate Credentialing Program;*
34 *and has a minimum of two years of experience in social work or*
35 *victim advocacy.*

36 *(5) One member who shall be appointed by, and serve at the*
37 *pleasure of, the Governor and who is a physician, psychiatrist, or*
38 *psychologist with expertise in treating or providing services to*
39 *crime victims.*

1 (c) *The Governor shall appoint a Special Master who shall*
2 *serve at the pleasure of the Governor for all claims requiring a*
3 *hearing pursuant to Section 4902 of the Penal Code. A Special*
4 *Master shall be an individual who is qualified by education,*
5 *training, and work experience in taking evidence, making*
6 *determinations of fact, and applying the facts to the law,*
7 *particularly in the area of wrongful convictions.*

8 SEC. 2. Section 13902 of the Government Code is amended
9 to read:

10 13902. A member of the board who is not a state officer shall
11 receive fifty dollars (\$50) for every day of actual attendance at
12 meetings of the board not in excess of eight meetings per month,
13 together with necessary traveling expenses in attending these
14 meetings.

15 SEC. 3. *Section 1485.5 of the Penal Code is amended to read:*

16 1485.5. (a) If the district attorney or Attorney General
17 stipulates to or does not contest the factual allegations underlying
18 one or more of the grounds for granting a writ of habeas corpus
19 or a motion to vacate a judgment, the facts underlying the basis
20 for the court's ruling or order shall be binding on the Attorney
21 General, the factfinder, *the Special Master*, and the California
22 Victim Compensation Board.

23 (b) The district attorney shall provide notice to the Attorney
24 General prior to entering into a stipulation of facts that will be the
25 basis for the granting of a writ of habeas corpus or a motion to
26 vacate a judgment.

27 (c) The express factual findings made by the court, including
28 credibility determinations, in considering a petition for habeas
29 corpus, a motion to vacate judgment pursuant to Section 1473.6,
30 or an application for a certificate of factual innocence, shall be
31 binding on the Attorney General, the factfinder, and the California
32 Victim Compensation Board.

33 (d) For the purposes of this section, "express factual findings"
34 are findings established as the basis for the court's ruling or order.

35 (e) For purposes of this section, "court" is defined as a state or
36 federal court.

37 SEC. 4. *Section 4902 of the Penal Code is amended to read:*

38 4902. (a) If the provisions of Section 851.865 or 1485.55 apply
39 in any claim, the California Victim Compensation Board shall,
40 within 30 days of the presentation of the claim, calculate the

1 compensation for the claimant pursuant to Section 4904 and
2 recommend to the Legislature payment of that sum. As to any
3 claim to which Section 851.865 or 1485.55 does not apply, the
4 Attorney General shall respond to the claim within 60 days or
5 request an extension of time, upon a showing of good cause.

6 (b) Upon receipt of a response from the Attorney General, the
7 board shall fix a time and place for the hearing of the ~~claim~~, *claim*
8 *by the Special Master appointed pursuant to Section 13901 of the*
9 *Government Code* and shall mail notice thereof to the claimant
10 and to the Attorney General at least 15 days prior to the time fixed
11 for the hearing. The board shall use reasonable diligence in setting
12 the date for the hearing and shall attempt to set the date for the
13 hearing at the earliest date convenient for the parties and the ~~board~~.
14 *Special Master*.

15 (c) If the time period for response elapses without a request for
16 extension or a response from the Attorney General pursuant to
17 subdivision (a), the board shall fix a time and place for the hearing
18 of the claim, mail notice thereof to the claimant at least 15 days
19 prior to the time fixed for the hearing, and make a recommendation
20 based on the claimant's verified claim and any evidence presented
21 by him or her.

22 *SEC. 5. Section 4903 of the Penal Code is amended to read:*

23 4903. (a) At the hearing *before the Special Master*, the
24 claimant shall introduce evidence in support of the claim, and the
25 Attorney General may introduce evidence in opposition thereto.
26 The claimant shall prove the facts set forth in the statement
27 constituting the claim, including the fact that the crime with which
28 he or she was charged was either not committed at all, or, if
29 committed, was not committed by him or her, and the pecuniary
30 injury sustained by him or her through his or her erroneous
31 conviction and imprisonment.

32 (b) In a hearing ~~before the board~~, *the Special Master*, the factual
33 findings and credibility determinations establishing the court's
34 basis for granting a writ of habeas corpus, a motion for new trial
35 pursuant to Section 1473.6, or an application for a certificate of
36 factual innocence as described in Section 1485.5 shall be binding
37 on the Attorney General, the factfinder, *the Special Master*, and
38 the board.

39 (c) The board shall deny payment of any claim if the ~~board~~
40 *Special Master* finds by a preponderance of the evidence that a

1 claimant pled guilty with the specific intent to protect another from
2 prosecution for the underlying conviction for which the claimant
3 is seeking compensation.

4 *SEC. 6. Section 4904 of the Penal Code is amended to read:*

5 4904. If the evidence shows that the crime with which the
6 claimant was charged was either not committed at all, or, if
7 committed, was not committed by the claimant, and that the
8 claimant has sustained injury through his or her erroneous
9 conviction and imprisonment, the California Victim Compensation
10 Board shall report the facts of the case and ~~its~~ *the Special Master's*
11 conclusions to the next Legislature, with a recommendation that
12 the Legislature make an appropriation for the purpose of
13 indemnifying the claimant for the injury. The amount of the
14 appropriation recommended shall be a sum equivalent to one
15 hundred forty dollars (\$140) per day of incarceration served, and
16 shall include any time spent in custody, including in a county jail,
17 that is considered to be part of the term of incarceration. That
18 appropriation shall not be treated as gross income to the recipient
19 under the Revenue and Taxation Code.